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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SHARON DE EDWARDS, M.D.,)
)
 Plaintiff,)
)
 v.)
)
 INTERNAL REVENUE SERVICE,)
 UNITED STATES GOVERNMENT)
 DEPARTMENT OF TREASURY, KATHY)
 JAKABCIN, JOSEPH SMITH, and Does 1)
 through 50, Inclusive,)
)
 Defendants.

No. C-07-3102-WHA

**UNITED STATES' REQUEST FOR
 APPROVAL TO FILE SUPPLEMENT
 TO OPPOSITION TO MOTION FOR A
 PRELIMINARY INJUNCTION**

Date: November 1, 2007____
 Time: 2:00 p.m.

Pursuant to Rule 7-3(d) of the Local Rules for the Northern District of California, the United States, by and through its undersigned counsel, seeks leave to file this supplement to its Opposition to Motion for Preliminary Injunction. As grounds for this request, the United States submits the following.

SUPPLEMENTAL ARGUMENT

Plaintiff filed several lawsuits disputing the amount of tax liability owed by Sharon de Edwards, Inc.. The underlying basis for the lawsuits is the allegation that the IRS is levying funds mainly from insurance companies and not giving proper credit when applying those levied

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1 funds to corporation's tax liabilities. Accordingly, Plaintiff has consistently sought an
 2 accounting of the payments received by the IRS in an effort to determine whether those payments
 3 were properly credited.

4 In each of the cases, Plaintiff contends that the IRS levied funds sufficient to fully pay the tax
 5 liabilities of the corporation. According to the Plaintiff, an accounting of the levied funds will
 6 show an overpayment of the taxes and establish that a refund is due. See paragraph 20 of
 7 Amended Complaint in Case No. C-07-3102-WHA; Sharon de Edwards, M.D. v. Internal
 8 Revenue Service, Case No. 04-5025-PJH (N.D. Cal.); F. Anthony Edwards a/k/a Fernando
 9 Edwards v. Commissioner, Docket No. 5022-05L (U.S. Tax Court).¹

10 Plaintiff commenced the above-captioned case by filing a complaint seeking an accounting
 11 which allegedly will establish that a refund is due to the corporation. Sharon De Edwards, M.D.
 12 v. Internal Revenue Service, et al., Case No. C 06-07116 WHA. Concurrent with the filing of the
 13 district court action, Plaintiff filed requests for Collection Due Process ("CDP") hearings with
 14 the Appeals Division of the Internal Revenue Service. Through the CDP hearings, Plaintiff also
 15 seeks the same accounting for the levied funds. Because Plaintiff had administrative Collection
 16 Due Process proceedings pending at the same time as the district court action, and the issues
 17 were the same, the parties stipulated to dismissal of the district court proceeding without
 18 prejudice in order to allow Plaintiff the opportunity to resolve the dispute administratively. By
 19 Order dated March 15, 2007, this Court granted the parties request and dismissed the action
 20 without prejudice to refile the complaint on or before July 13, 2007. See Exhibit D to First
 21 Amended Complaint for Refund of Taxes.

22 Subsequent to the March 15, 2007 Order dismissing the district court action, the following
 23 two events occurred with respect to the CDP administrative proceedings:

24 1. On April 19, 2007, an additional request for a CDP hearing was received by the IRS
 25 Appeals Division. The hearing was scheduled to occur telephonically on July 10, 2007;

26
 27 ¹Although the caption is in Mr. Edwards' name, he brings up Mrs. Edwards' taxes in the
 28 petition.

1 however, neither the taxpayer nor the representative was available. Accordingly, the IRS
2 Appeals Officer sent a letter on July 10, 2007, giving the taxpayer until July 25, 2007, to submit
3 additional documentation for consideration. See Exhibit 1 to Declaration of Cynthia Stier, page
4 2; Exhibit 2 to Stier Declaration, page 2; Exhibit 3 to Stier Declaration, page 1; Exhibit 4 to Stier
5 Declaration, page 2.

6 2. On May 30, 2007, taxpayer submitted a third CDP hearing request. The third hearing was
7 conducted face to face on August 13, 2007. See Exhibit 1 to Stier Declaration, page 5; Exhibit 2
8 to Stier Declaration, page 5; Exhibit 3 to Stier Declaration, pages 4-5; Exhibit 4 to Stier
9 Declaration, page 5.

10 Because the IRS Appeals Division had not yet rendered its decision, on or about June 13,
11 2007, Plaintiff re-filed a Complaint "out of an abundance of caution..." Amended Complaint,
12 paragraph 22. Plaintiff alleges that the complaint was not served "so as to allow the IRS Office
13 of Appeal more time to comply with providing the report." Amended Complaint, paragraph 22.

14 By Order entered September 27, 2007, the Court ordered Plaintiff to serve Defendants by
15 October 27, 2007. To date, the individual defendants have not been served with process. The
16 United States of America, the real party in interest, has not been served. The docket does not
17 show service of process upon any defendant to date.

18 On October 15, 2007, Plaintiff filed a Motion for Preliminary Injunction seeking to enjoin the
19 IRS from administrative collection activities.

20 Pursuant to this Court's request, the United States responded to the Motion for Preliminary
21 Injunction on October 16, 2007.

22 Subsequent to the government's response, on October 24, 2007, the IRS Appeals Division
23 issued its Decision Letter and Notices of Determination. The issues underlying the Collection
24 Due Process hearings are the same as the issue raised in this action - whether the taxpayer has
25 presented evidence to show that the monies collected by levy were not properly applied to the
26 corporation's federal tax liabilities. See Exhibits 1 through 6 to Stier Declaration.

27 The United States seeks leave to Supplement its Opposition to Motion for a Preliminary

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Injunction to submit the findings of the IRS Appeals Division.

Findings of the IRS Appeals Division - CDP Hearing

The IRS Appeals Officer considered the following issues raised by the taxpayer corporation for the following tax periods:

Decision Letter - Exhibit 3 to Stier Declaration

Form 941 employment tax liability for all four quarters of 1996;
Form 941 employment tax liability for all four quarters of 1997;
Form 941 employment tax liability for first three quarters of 2005.

Notice of Determination Letter - Exhibit 2 to Stier Declaration

Form 941 employment tax liability for first and second quarters of 2006;
Civil Penalty for period ending December 31, 2003 (26 U.S.C. §6721) .

Notice of Determination Letter - Exhibit 1 to Stier Declaration

Form 941 employment tax liability for first three quarters of 1998;
Form 940 employment tax liability for 2005.

Notice of Determination Letter - Exhibit 4 to Stier Declaration

Form 941 employment tax liability for third quarter of 2006.

* * * * *

Summary of Determination

The IRS Appeals Officer sustained the filed Notices of Federal Tax Lien and sustained administrative collection activity. The taxpayer submitted numerous documents which failed to support the allegation that the taxes had been paid in full. See page 2 of Exhibits 1, 2 and 4 and page 1 of Exhibit 3.

Issues Raised by Taxpayer

1. Tax Liabilities

Taxpayer alleged that the IRS tax amounts were incorrect. The Appeals Officer compared the tax liabilities reported on the Forms 941 provided by the taxpayer and the IRS transcripts and found that the amount of tax matched. See page

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1 2. Tax Returns Timely Filed.

2 Taxpayer alleged that the Forms 941 and 940 had been timely filed but provided no evidence
3 of the date of filing. The Appeals Officer relied on current computer information and transcripts
4 to determine the date of filing of these returns. Accordingly, taxpayer presented no evidence to
5 refute the IRS transcripts.

6 3. Tax Assessments Invalid

7 Taxpayer alleges the tax assessments are not valid because they were not timely assessed,
8 because the IRS failed to timely notify the taxpayer of the assessments and because the IRS filed
9 multiple liens. The Appeals Officer reviewed the transcripts to determine that the assessments
10 were timely as they showed that the assessments were made when the tax returns were filed. As
11 stated above, the taxpayer provided no evidence to show the tax returns were filed on dates other
12 than those set forth in the IRS transcripts. Pursuant to the transcripts, the assessments are timely.
13 The IRS transcripts show that notices were timely sent to the taxpayer. This issue is also
14 dependent on the filing date of the tax returns. The issue concerning the filing of multiple
15 Notices of Federal Tax Lien does not affect the validity of the assessment.

16 4. Taxpayer billed for another company's tax liability.

17 IRS transcripts revealed that a notice sent to the taxpayer's address stated a different taxpayer
18 with an Employment Identification Number different from the taxpayer. The Appeals Officer
19 reviewed the IRS transcripts and found that the taxpayer was not charged/assessed with the
20 liability for the other taxpayer.

21 5. Payment Application.

22 Taxpayer submitted over 800 documents alleging that the payments were not properly
23 applied to the taxpayer's outstanding tax accounts. The Appeals Officer reviewed the documents
24 and determined:

25 (1) Taxpayer alleged that specific payments were applied to the sole proprietorship. The
26 Appeals Officer reviewed the payments and determined they were not applied to the sole
27 proprietorship.

1 (2) The 800 documents provided were analyzed by the Appeals Officer and to the extent
2 possible, the payments were shown on a spreadsheet. See Exhibits ____, __ and __ to Stier
3 Declaration. To the extent that the Appeals Officer could analyze the documents provided, the
4 spreadsheet shows the application of payments to the tax liability. See Exhibit _____. To the
5 extent that the document could not be traced, the Appeals Officer noted the reason in the
6 "Comments." Many of the alleged payments could not be traced because (1) taxpayer provided
7 very few canceled checks; (2) taxpayer provided few canceled checks which shoed both sides of
8 check to verify endorsement by IRS; (3) some checks showed endorsement by non-IRS
9 individuals.

10 6. Payments Not Applied Timely

11 Taxpayer alleged that additional penalties and interest accrued because the IRS failed to
12 timely apply levy payments. The Appeals Officer reviewed computer information, case file
13 documentation and taxpayer's documentation and determined that the vendors often sent a copy
14 of the notices of levy attachment to the taxpayer on a date earlier than the levied funds were sent
15 to the IRS.

16 7. Designation of levy payments.

17 The Appeals Officer found that the payments were applied to tax, then penalty and interest in
18 accordance with the Internal Revenue Manual. To the extent that taxpayer may be arguing the
19 right to designate the levy payments to a certain tax quarter, the taxpayer is misguided.

20 8. Taxes Paid in Full

21 Taxpayer claims to have overpaid taxes in the amount of approximately \$82,000. The
22 Appeals Officer, pursuant to IRS transcripts, determined that the taxpayer owes \$181,343.50,
23 calculated through October 31, 2007. That amount includes \$71,095.00 in tax, with statutory
24 additions accruing at the rate of \$952.85 per month.

25 9. Bankruptcy

26 Taxpayer alleged that the IRS improperly applied payments from the corporation to the
27 corporate officer's older sole proprietorship liability. The Appeals Officer reviewed the alleged

1 payments in dispute and concluded that they were not applied to the sole proprietorship
2 liabilities.

3 10. Timeliness of IRS actions.

4 Taxpayer alleges that the IRS created or contributed to tax liabilities by failing to take rapid
5 collection action. The Appeals Officer determined that the taxpayer's repeated failure to file
6 required tax returns and information timely and/or failure to pay taxes on time for over a decade
7 resulted in tax liabilities. The IRS records also show that the IRS has taken enforced collection
8 activity.

9 11. Interest and Penalty abatement

10 Taxpayer seeks interest and penalty abatement on the grounds that the tax returns were timely
11 filed and IRS collection was not taken timely. The Appeals Officer rejected this request on the
12 grounds that the IRS transcripts did not show timely returns filed and the obligation to timely file
13 and pay taxes belongs to the taxpayer.

14 12. Lien withdrawal

15 Taxpayer requests withdrawal of the Notices of Federal Tax Lien on the grounds that the
16 taxes have been overpaid. The Appeals Officer rejected this request because pursuant to IRS
17 transcripts, taxpayer owes \$181,343.50, calculated through October 31, 2007. That amount
18 includes \$71,095.00 in tax, with statutory additions accruing at the rate of \$952.85 per month.

19 13. Offer in compromise

20 Taxpayer failed to submit the appropriate forms and this issue could not be considered.

21 14. On going collection activity

22 The taxpayer requested that the IRS cease forced collection during the pendency of the
23 present hearings. Pursuant to 26 U.S.C. §6030(e), "the levy actions which are the subject of the
24 requested hearing shall be suspended for the period during which such hearing, and appeals
25 therein, are pending." The current levy activities are with respect to tax periods for which
26 taxpayer had a prior CDP hearing or for which periods for which hearing were not timely
27 requested.

1 See Exhibits 1, 2, 3 and 4 to Stier Declaration.

2 The IRS Appeals determinations, as summarized above, and as shown in the Notices
3 submitted with the Declaration of Cynthia Stier, further support the Government's Opposition to
4 the Motion for Preliminary Injunction as these decisions show that the government can prevail on
5 the merits.

6
7 **IV. CONCLUSION**

8 For the foregoing reasons, the United States requests leave to file this Supplement to its
9 Opposition to Plaintiff's Motion for a Preliminary Injunction. Also, for the reasons set forth in
10 this Supplement and the government's previous Opposition, plaintiff's Application for
11 Preliminary Injunction is due to be denied.

12
13
14
15 Respectfully submitted,
16 SCOTT SCHOOLS
United States Attorney

17 Dated: October 31, 2007

18 By: /s/ Cynthia Stier
CYNTHIA STIER
19 Assistant U.S. Attorney

20 Attorneys for the Defendants
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27

CERTIFICATE OF SERVICE

I, **KATHY TAT** declare:

That I am a citizen of the United States of America and employed in San Francisco County, California; that my business address is Office of United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, California 94102; that I am over the age of eighteen years, and am not a party to the above-entitled action.

I am employed by the United States Attorney for the Northern District of California and discretion to be competent to serve papers. The undersigned further certifies that I caused a copy of the following:

**UNITED STATES' REQUEST FOR APPROVAL TO FILE SUPPLEMENT TO
OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION and
DECLARATION OF CYNTHIA STIER IN SUPPORT OF UNITED STATES' REQUEST
FOR APPROVAL TO FILE SUPPLEMENT TO OPPOSITION TO MOTION FOR A
PRELIMINARY INJUNCTION**

to be served this date upon the party(ies) in this action by placing a true copy thereof in a sealed envelope, and served as follows:

_____ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

X PERSONAL SERVICE (BY MESSENGER/HAND DELIVERED)

_____ **FACSIMILE (FAX) No.:** _____

to the parties addressed as follows:

F. Anthony Edwards
Law Offices of F. Anthony Edwards
1850 Mt. Diablo Blvd., Ste. 650
Walnut Creek, CA 94596

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on **October 31, 2007** at San Francisco, California.

/s/ Kathy Tat

KATHY TAT
Legal Assistant